

### **REMARKS/ARGUMENTS**

Applicant has carefully reviewed and considered the Final Office Action mailed on June 15, 2009, and the references cited therewith.

No claims are amended, canceled, or added; Claims 1-8, 10, 13-14, 16-28, 47, 50-55, 57-61, 63-69, 71-86 and 89-93 were previously canceled; as a result, claims 9, 11-12, 15, 29-46, 48-49, 56, 62, 70, and 87-88 are now pending in this application.

#### **Examiner's Interview Summary**

Applicant thanks Examiner Lang for conducting a brief interview by phone on August 7, 2009 to discuss the present application with Dan Dettlaff. During this interview, independent claim 1 was discussed in view of the Kugler, Chobotov and Hickok references. In particular, the limitation of a plurality of structures extending longitudinally beyond the opening was discussed with respect to the above-mentioned references. However, no agreement was reached as to allowable subject matter.

#### **Double Patenting Rejection**

Claims 9, 11-12, 15, 29-46, 48-49, 56, 62, 70, and 87-88 were rejected under a non-statutory double patenting rejection over claims 1-24 of Chuter, et al. (U.S. Patent No. 6,652,580) in view of Hickok (U.S. Patent No. 2,030,791). Applicants respectfully traverse the rejection as follows.

Applicants respectfully submit that the modification of the Chuter reference with the Hickok reference is improper because the Hickok reference is non-analogous art. Applicants re-iterate the previously-made arguments in that regard (see detailed arguments set forth below with respect to the 103 rejection over the Kugler, Chobotov, and Hickok references). Applicants respectfully submit that because the Hickok reference is a non-analogous reference, there is no permissible basis for combining the Chuter and Hickok references, and even if combined, the

combination does not teach, suggest or make obvious each and every claimed limitation.

However, in the interest of furthering prosecution of the present matter, a Terminal Disclaimer in compliance with 37 CFR 1.321(c) is enclosed herewith to overcome this rejection. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the double patenting rejection of independent claim 9, as well as those claims that depend therefrom.

§ 103 Rejection of the Claims

Claims 9, 11-12, 15, 29-46, 48-49, 56, 62, 70, and 87-88 were rejected under 35 USC § 103(a) as being unpatentable over Chuter, et al. (U.S. Patent No. 6,652,580) in view of Hickok (U.S. Patent No. 2,030,791). Applicants respectfully traverse the rejection as follows.

As discussed above, Applicants respectfully submit that the modification of the Chuter reference with the Hickok reference is improper because the Hickok reference is non-analogous art. Applicants respectfully submit that because the Hickok reference is a non-analogous reference, there is no permissible basis for combining the Chuter and Hickok references, and even if combined, the combination does not teach, suggest or make obvious each and every claimed limitation.

However, in the interest of furthering prosecution of the present matter, a declaration under 37 CFR 1.130 stating that the present application and the Chuter reference are currently owned by the same party and that the inventor named in the present application is the prior inventor under 35 U.S.C. 104, together with a Terminal Disclaimer in compliance with 37 CFR 1.321(c), are enclosed herewith to overcome this rejection.

Applicant respectfully submits that the Chuter reference is not prior art, and that the Hickok reference alone, does not teach, suggest or make obvious each and every element and limitation recited in Applicant's independent claim 9. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection of independent claim 9 with respect to the Chuter and Hickok references, as well as those claims that depend therefrom.

Claims 9, 11-12, 15, 29-46, 48-49, 56, 62, 70, and 87-88 were rejected under 35 USC § 103(a) as being unpatentable over Kugler, et al. (U.S. Patent No. 6,280,466) in view of Chobotov, et al. (U.S. Patent No. 7,090,693), in view of Hickok (U.S. Patent No. 2,030,791). Applicants respectfully traverse the rejection as follows.

The Kugler reference is directed to an endovascular graft system, and appears to describe a graft component (45) being secured to an expandable frame (10) by attaching structures. However, pages 6-7 of the Office action mailed June 15, 2009 acknowledges that the Kugler reference “does not teach the attaching structures are secured onto the graft by structures extending longitudinally from the graft that are then folded over the attaching structures to form a tab.” Indeed, it appears the Kugler reference teaches the graft being attached to the expandable frame (10) using sutures without use of tabs formed by being folded over (see Figure 3B and discussion thereof in col. 7). Therefore, the Office action looks to the Chobotov reference.

However, the Office action does not suggest any motivation for looking to the Chobotov reference to replace the attachment method taught in the Kugler reference. Applicant respectfully submits that one having ordinary skill in the art would not be motivated to look to the Chobotov reference for modifying the Kugler reference, particularly since Figures 3A – 5 appear to show the aortic stent 10 extending beyond the graft material 45, such that the graft material is not positioned near the end of the rigid stent, as the Chobotov reference appears to rely upon.

The Chobotov reference appears to describe an endovascular graft joint and method for manufacture (Title, Abstract). The Chobotov reference appears to teach attaching the graft material (291) to a stent using flaps (see Figure 28 and discussion thereof). Specifically, the Chobotov reference appears to describe the graft material (291) having a tubular shape, and cutting longitudinal slits (293) in the graft material (291) to form the flaps. The flaps appear to be folded back over a portion of a serpentine ring member (284) (col. 18, line 61 – col. 19, line 20).

Page 8 of the Office action acknowledges that the Chobotov reference “does not specifically disclose the folded tabs as initially extending longitudinally beyond the graft opening.” The Office action further looks to the Hickok reference to provide this claimed limitation. Again, no motivation is provided as to why one skilled in the art would be motivated to look to the non-analogous art Hickok

reference for further modifying the Kugler and Chobotov references. Remarks concerning the Hickok reference being non-analogous art are presented below.

Page 8 of the Office action suggests that Figure 1 of the Hickok reference teaches the tabs initially extend longitudinally beyond the point of attachment and are folded back on themselves. Applicant respectfully submits that the Hickok reference does not teach the tabs extending longitudinally beyond the graft opening, which the Office action acknowledges (page 8) is not specifically disclosed by the Chobotov reference. The Hickok reference is directed to braces (i.e., pant suspenders) and the tab relied on by the Office action is used to attach elastic shoulder straps to cord forming button engaging loops. There does not appear to be any structure disclosed in the Hickok reference to teach or suggest the tabs extending past an opening, since suspenders do not have any such opening. More specifically, the Hickok reference does not appear to teach or suggest any structure corresponding to a graft opening to support that the Hickok reference teaches or suggests the tabs extending longitudinally beyond such an opening.

In addition, Applicant respectfully submits that, even if the Hickok reference were not non-analogous art, one having ordinary skill in the art would not look to the Hickok reference to modify the teachings of the Chobotov reference. The Chobotov reference already appears to teach the flaps extending beyond the point of attachment (but not the graft material opening), since the Chobotov reference describes folding the tab back over the point of attachment (e.g., the serpentine ring member (284)).

The Hickok reference does not even appear to teach or suggest the flap extending from some item. Instead, the Hickok reference suggests “wrapping a strip 12 of adhesive tape around the strands to form a flap 13 and securing said flap 13 by stitching and by the adhesive of the tape between the rear end of one of the back straps and the adjacent portion of the tab thereof.” Nor are the leather tabs 8 described to be extending from a larger area of leather material. Instead they appear to be merely a discrete portion of leather sewed to the back straps, not an extension of the back strap material. Applicant respectfully submits that the motivation for

modifying the Chobotov reference with the Hickok reference, as suggested in the Office action to teach extending from something, is insufficient to support the 103 rejection.

Furthermore, Applicant respectfully submits that the Chobotov reference teaches away from tabs extending longitudinally beyond the graft opening. Figures 1-4, and the related discussion thereof, in the Chobotov reference describe a method for manufacturing the graft material (e.g., by wrapping layers around a shape forming mandrel). Specifically with respect to Figure 4, the Chobotov reference teaches trimming the end of the graft material using a knife edge (32) pressed against the layers of graft material and moved circumferentially about the shape forming mandrel to produce a clean end cut for the tubular shaped graft material. Trimming the end of the graft material such that tabs extend beyond the opening would complicate and add expense to the manufacturing process described in the Chobotov reference. Therefore, Applicant respectfully submits that one having ordinary skill in the art, without benefit of the present disclosure, would not be motivated to modify the simple manufacturing teachings of the Chobotov reference to provide tabs extending beyond the opening of the graft material, involving a more complicated manufacturing process, as suggested by the present Office action.

Also, the Chobotov reference teaches a serpentine ring member (284). The serpentine shape is used to accommodate the simpler manufacturing method of trimming the graft material to have an opening without extending tabs. That is, by teaching use of the serpentine ring member (284), tabs extending beyond the opening of the graft material add manufacturing complication and additional material cost, without commensurate benefit when folded over the serpentine ring member (284).

Finally, to rely on a reference under 35 USC § 103, the reference must be analogous prior art. The prior art reference must either be in the field of applicant's endeavour or be reasonably pertinent to the particular problem with which the applicant was concerned. The present application is directed to an endovascular graft for treating vasculature, whereas the Hickok reference is directed to

“improvements in braces or suspenders” (col. 1, lines 1-2). The present application is directed to an implantable medical apparatus, whereas the Hickok reference describes an apparatus for holding up pants. Applicant respectfully submits that the particular problem with which the applicant was concerned was not simply folding of tabs to secure two members, but rather attaching graft material to an expandable frame for implantation into the human body. As such, Applicant respectfully submits that the Hickok reference is non-analogous art because it is not in the field of applicant’s endeavour, and is not reasonably pertinent to the particular problem of securing endovascular graft material to an expandable frame.

Applicant respectfully submits that the Kugler reference, in view of the Chobotov and Hickok references, does not teach, suggest or make obvious each and every element and limitation recited in Applicant’s independent claim 9. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection of independent claim 9 with respect to the Kugler, Chobotov, and Hickok references, as well as those claims that depend therefrom.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's below listed attorney at (612) 236-0122 to facilitate prosecution of this matter.

**CERTIFICATE UNDER 37 CFR §1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS AF Commissioner for Patents, P.O. BOX 1450 Alexandria, VA 22313-1450, on this 14 day of August, 2009.

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